

Dear Chairman Norgaard:

On behalf of the State and Federal Contractors Water Agency, I am writing in reaction to the Independent Science Board's (ISB) September 4<sup>th</sup> draft memo to the Council transmitting its "Synthesis of Recommendations" regarding the 5<sup>th</sup> Draft Delta Plan. We appreciate the conscientiousness of the ISB and the comprehensive nature of your comments. Overall we find much to agree with in your reaction to various deficiencies and strengths of the 5<sup>th</sup> draft.

However, I would like to bring to your attention a concern we encourage you to rectify in the final memo to the Council. Understanding that the ISB is in the difficult position of responding to the text of the 5<sup>th</sup> draft as presented and not being intended as a body to question or arbitrate differences of opinion regarding the proper interpretation of specific sections of the Delta Reform Act (Act), we nevertheless are writing to caution against the ISB lending its credibility, even if unintentional, to a position that is inconsistent with the clear language of the Act, legislative history and legislative intent.

The references to the "reduce reliance" policy of section 85021 of the Act come across as the ISB accepting the Delta Plan's apparent misinterpretation of the Act and conflating reduce reliance "in meeting California's future water supply needs" with the "improving water supply reliability" prong of the coequal goals. These are not interchangeable, they represent different policy aims and they require different actions to achieve them. As currently referenced in your memo (at pages 6, 7, and 12), the interpretation and use of "reduce reliance" come across as arguably defining the term as requiring an absolute reduction of exports from a present-day baseline. This interpretation reads the word "future" out of the statute and even implies the expected water supply and water supply reliability improvements contemplated through implementation of the Bay Delta Conservation Plan (BDCP) would be inconsistent with the policy statement in section 85021. Such an interpretation would contravene the intent of the Legislature's direction to incorporate the BDCP into the Delta Plan if certain statutory requirements are satisfied; i.e. the benefits of BDCP were definitively determined to be consistent with 85021 as a consequence of section 85320's direction to incorporate the BDCP into the Delta Plan.

Moreover, section 85020 lists those policy directives "inherent in the coequal goals" and that list does not include "reduce reliance", which is identified separately as a more general state policy in section 85021. Additionally, section 85300, which describes in some detail the Legislature's expectations for the content of the Delta Plan, doesn't mention "reduce reliance". It is our view that while an effective Delta Plan will contribute to the achievement of the new state policy stated in section 85021, it is not a policy that was intended to be a central component of the Delta Plan itself, which was instead supposed to be focused much more on activities and actions in the Delta proper than with broader water management concerns of the state.

Also evidencing this fact is the Act's explicit statement that nothing in the Act alters the jurisdiction or responsibilities of the State Water Resources Control Board – a directive that the memo's discussion on page 16 about the ISB's preference for stronger potential engagement by the Council with the SWRCB ("bolder...expectations") is not consistent with. Instead, we encourage the ISB to highlight the need for and promote the Council's facilitation of the development and use of better scientific information and analysis to inform the SWRCB processes rather than seeking to insert itself into those processes.

Specific suggestions are as follows:

Page 6, first sentence of Section 4, simply delete the words "by reducing reliance on water from the Delta" and the sentence reads correctly. From the perspective of the 25 million plus users of export water supplies, their "water supply reliability" will not be "improved" by a reduction in exports. Deleting these words maintains the important concept about the need for broad investments in water supply reliability improvements without getting ensnared in the "debate" about "reduce reliance", which is not really within the ISB's purview.

Page 7, last line; the call for “a more direct statement about reducing reliance on the Delta” could be interpreted as the ISB asking the Council to be more definitive about strategies for reducing exports rather than being more definitive about its interpretation of section 85021. This statement should be modified to make it clear that the ISB is seeking clarity about the Council’s interpretation of the policy and having that reflected in the Delta Plan, rather than being misinterpreted as calling for reduced exports as a necessary component of the Delta Plan itself.

Page 12, last sentence repeats this improper characterization of the “reduce reliance” policy by stating that “reductions in net use of Delta water” could be a “better measure” of success. This notion of net aggregate reductions in exports is not a metric consistent with the water supply prong of the coequal goals and the sentence should be deleted.

Thank you for your consideration.

Sincerely,

Greg Zlotnick  
On behalf of SFCWA

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